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data shall be released only at the discretion of the Executive Vice President, CCC, and then only to the extent that such release is not prohibited by law.

§ 1446.805 Penalty for failure to keep records and make reports.

Any person, who fails to make any report or keep any record as required under this part or who falsifies any information on any such report or record shall be subject to a penalty in accordance with § 1446.703 of this part.

§ 1446.806 Fraud by handler.

Any misrepresentation made or effectively made by a handler within or without the records or reports maintained in connection with this part shall be subject to a penalty under this part and such penalty shall be in addition to any other remedies available by law for such misrepresentation (including, but not limited to, criminal prosecution). In addition, the handler and any individual or other person involved with such misrepresentation, including employees of the handler, shall be liable to CCC for all costs which CCC incurs as a result of such misrepresentation, together with interest at the per annum rate which the Treasurer of the United States charged CCC on the date the misrepresentation was made.

§ 1446.807 Paperwork Reduction Act assigned numbers.

The information collection requirements contained in these regulations (7 CFR part 1446) have been approved by the Office of Management and Budget (OMB) in accordance with 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0560-0006, 0560-0014 and 0560-0133.

[56 FR 38331, Aug. 13, 1991]

PART 1464—TOBACCO

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APPENDIX A TO PART 1464—IMPORTER ENTRY AND ASSESSMENT WORKSHEET

AUTHORITY: 7 U.S.C. 1421, 1423, 1441, 1445, 1445-1, 1445-2; 15 U.S.C. 714b, 714c; Pub. L. 106-78, 113 Stat. 1135; Pub. L. 106-113, 113 Stat. 1501; Pub. L. 108-7, 117 Stat. 11.

Subpart A—Tobacco Loan Program

SOURCE: 45 FR 9253, Feb. 12, 1980, unless otherwise noted.

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§ 1464.1 Administration.

(a) This program will be administered by the Tobacco Division, FSA, under the general direction and supervision of the Executive Vice President, CCC. The program will be carried out by cooperative marketing associations (hereinafter referred to as "associations") acting on behalf of their producer members. To obtain a price support loan, an association must enter into a loan agreement with CCC. The loan agreement will set forth terms and conditions for making price support available to producers. To the extent provided in the loan agreement, an association shall meet the eligibility requirements for price support prescribed in the Cooperative Marketing Associations Eligibility Requirements for Price Support (part 1425 of this chapter), as amended. CCC reserves the right to restrict the number of associations with which it will contract. In so doing, CCC will select such associations as it deems necessary or desirable to effectuate the purposes of the program with a maximum of efficiency and economy of operations. The names of such associations may be obtained from the Tobacco Division, FSA, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013.

(b) Each year CCC will make loans to associations. The associations in turn will make price support advances available to eligible producers either directly or through auction warehouses. The tobacco on which producers receive price support advances will serve as security for the loans. Loans made to associations will include not only the initial loan value of the tobacco, but also amounts to cover costs of receiving, processing, storing, and selling the loan tobacco, including that part of overhead costs not borne by the association pursuant to § 1464.4. Associations will be authorized to enter into contracts for these services through the usual trade channels. Loans also may include amounts to cover any Federal and State income taxes which the associations are required by the Internal Revenue Service or State governmental body to pay on

income received from the sale of loan tobacco.

[45 FR 9253, Feb. 12, 1980, as amended at 47 FR 51555, Nov. 16, 1982; 48 FR 21110, May 11, 1983; 68 FR 65385, Nov. 20, 2003]

§ 1464.2 Availability of price support.

(a) *Kind of tobacco.* Price support will be available to eligible producers on the following kinds of eligible tobacco subject to conditions listed in §§ 1464.7 and 1464.8 respectively.

Flue-cured tobacco, types 11, 12, 13, and 14.
Kentucky-Tennessee Fire-cured tobacco, types 22 and 23.
Virginia Fire-cured tobacco, type 21.
Virginia Sun-cured tobacco, type 37.
Dark Air-Cured tobacco, types 35 and 36.
Burley tobacco, type 31.
Cigar filler and binder tobacco, types 42, 43, 44, 53, 54, and 55.

(b) *Method of providing price support—*

(1) *Through auction warehouses.* (i) Price support will be available for each lot of eligible tobacco offered for sale at auction warehouses which have contracted with an association, on a form of agreement approved by CCC, to make price support advances to producers on behalf of the association. Producers will deliver their tobacco to auction warehouses which will display the tobacco and offer it for sale at auction. Each contract between an association and an auction warehouse will require the auction warehouse to see that producers are informed that price support advances are available for each lot of eligible tobacco offered for sale at auction when the final bid is less than the price support rate available for the grade of eligible tobacco comprising such lot. For Flue-cured and Burley tobacco, the associations' contracts with auction warehouses will also require the auction warehouses to mark any tobacco sale bill "No Price Support" if the marketing of the pounds of tobacco covered by such bill will result in the producer marketing in excess of 103 percent of the producer's effective farm marketing quota. Producers will receive price support advances from the warehouse operator for any tobacco to be consigned by the warehouse operator to the association. Price support advances will be paid to the producer at the time the warehouse operator settles with the producer for the entire

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quantity of the producer's tobacco that has been displayed for inspection and offered for sale on any one day's auction market. The warehouse operator will be reimbursed by the association with funds borrowed from CCC.

(ii) Price support will be available only at warehouses where tobacco inspection service is provided by the Agricultural Marketing Service, USDA. Inspection and price support services may be extended to new markets or to additional sales on established markets in accordance with this part and Subpart A of part 29 of this title which provides for formal public hearings prior to extending of additional services.

(iii) CCC reserves the right to direct the association to withhold a contract under the price support program from any auction warehouse for one or more years if, based on previous performance of similar contracts, or other evidence, there is substantial reason to believe that such warehouse will not fulfill its contract obligations.

(2) *Upon direct delivery to the Association.* Eligible producers in nonauction market areas may deliver eligible tobacco to central receiving points designated by the appropriate association.

(3) *Period of price support.* Price support will be available to eligible producers on eligible tobacco only during each year's normal marketing season for each kind of tobacco for which support is provided.

(4) Beginning with the 1981 crop, eligible producers may obtain price support on untied burley tobacco packed in bales subject to the following conditions:

(i) The quality and condition of the tobacco contained in each bale delivered for price support as a single lot will be representative of the quality and condition of the tobacco contained in all other such bales of the same lot.

(ii) The tobacco in each bale will be stalk-cured.

(iii) The bales will not contain foreign matter or conceal inferior tobacco.

(iv) Specification of bales:

(A) Bales must be approximately 1×2×3 feet in size.

(B) The leaves in bales must be untied and oriented.

(C) The basket ticket shall show the number of bales in the lot. Each bale in the lot shall be identified by a uniform identification tag 1½ inches wide by 3¼ inches long which shall be attached securely to the bale and shall show at least the following information: (1) Warehouse registration number, (2) basket ticket identification number, and (3) bale number.

[45 FR 9253, Feb. 12, 1980; 45 FR 26687, Apr. 21, 1980, as amended at 45 FR 68914, Oct. 17 1980; 46 FR 48901, Oct. 5, 1981; 47 FR 28607, July 1, 1982; 47 FR 44542, Oct. 8, 1982; 48 FR 28425, June 22, 1983; 51 FR 32426, Sept. 12, 1986; 56 FR 21259, May 8, 1991; 62 FR 3198, Jan. 22, 1997; 67 FR 483, Jan. 4, 2002; 68 FR 65385, Nov. 20, 2003; 69 FR 70368, Dec. 6, 2004]

§ 1464.3 Level of price support.

(a) The level of price support for eligible tobacco shall be determined in accordance with section 106 of the Agricultural Act of 1949, as amended.

(b) Flue-Cured tobacco of varieties Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, and Dixie Bright 244, or a mixture or strain of such seed varieties or any breeding line of Flue-Cured tobacco seed varieties, including, but not limited to, 187 Golden Wilt (also designated by such names as No-Name, XYZ), having the quality and chemical characteristics of the seed varieties designated as Coker 139, Coker 140, Coker 316, Reams 64, Reams 266, or Dixie Bright 244 will be supported at one-half the support rate, plus 50 cents per hundred pounds, for comparable grades of acceptable varieties.

[51 FR 32426, Sept. 12, 1986]

§ 1464.4 Deductions from advances.

(a) There may be deducted from price support advances paid to tobacco producers amounts to help defray administrative overhead costs incurred by producers associations through which price support is made available to tobacco producers.

(b) If any producer on a farm is indebted to the United States and such indebtedness is listed on the Claim Control Record, the Government will effect collection of the amount of the indebtedness by setoff from the amount of price support advance due the producer in the following manner: Any

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marketing card covering tobacco eligible for price support issued for such farm in accordance with the applicable regulations issued by the Secretary of Agriculture with respect to marketing quotas (parts 723 of this title) will bear a notation showing the indebtedness, the name of the debtor and the amount of the indebtedness. The acceptance and use of a marketing card bearing a notation of indebtedness to the United States by a producer named as debtor on such card will constitute an authorization by such producer to any tobacco warehouse operator or association to pay the United States the price support advance due the producer to the extent of their indebtedness set forth on such card but not to exceed that portion of the price support advance remaining after deduction of usual warehouse and authorized price support charges and amounts due prior lienholders. The acceptance and use of a marketing card bearing a notation and information of indebtedness to the United States will not constitute a waiver of any right of the producer to contest the validity of such indebtedness by appropriate administrative appeal or legal action.

[45 FR 9253, Feb. 12, 1980, as amended at 47 FR 28608, July 1, 1982; 56 FR 21259, May 8, 1991; 68 FR 65386, Nov. 20, 2003]

§ 1464.5 Interest rate and general provisions.

The loans made to the associations will bear interest at the rate announced by CCC and will be non-recourse both as to principal and interest except in the case of misrepresentation, fraud or failure to carry out the loan agreement. Tobacco loses its identity as to original ownership through commingling in the packing process, and individual producers may not redeem their tobacco once it has been pledged as security for the loan. Associations will sell the loan tobacco as provided in the loan agreements for each crop, and the net proceeds of sales of the loan collateral of each crop will be applied to the loan account for such crop until the loan is repaid in full. With respect to the 1981 and prior crops, if the proceeds from the sale of loan collateral of the 1981 or any prior crop exceed (a) the amount of the loan

plus all fees, handling charges, operating costs and interest; and (b) any amount due CCC under a barter transfer agreement entered into between CCC and the association, such excess shall constitute "net gains" and shall be distributed in cash by the association to the producers who placed the tobacco under loan unless other disposition is approved by CCC.

[45 FR 9253, Feb. 12, 1980, as amended at 50 FR 7574, Feb. 25, 1985; 51 FR 32426, Sept. 12, 1986; 56 FR 21259, May 8, 1991]

§ 1464.6 Maturity date.

Loans made under the program will mature on demand.

§ 1464.7 Eligible producer.

To qualify as an eligible producer for purposes of receiving price support during the current marketing year a person must have eligible tobacco, as provided in §1464.8, for marketing and such person:

(a) Must have agreed to make contributions to a No Net Cost Fund or pay assessments to a No Net Cost Account, as applicable, in accordance with §1464.10.

(b) Must not have been found, after notice and opportunity for an administrative hearing in accordance with part 780 of this title, to have:

(1) Knowingly delivered nested tobacco for the purpose of receiving price support.

(2) Filed a false report with respect to the use of pesticides on tobacco produced for marketing during the current marketing year.

(3) Erroneously represented any fact affecting a tobacco program determination.

(4) Adopted any scheme or device which tends to defeat the purpose of the tobacco program.

(5) Made any fraudulent representations with respect to the tobacco program.

(c) Must be in compliance with the provisions of part 12 of this title.

(d) In addition to meeting all other requirements that apply elsewhere, including (but not limited to) the warehouse designation provisions of §1464.2, must not be ineligible, in accordance with part 1400 of this title, to receive

price support payments, loans and benefits.

(e) With respect to any tobacco which is presented for price support, must have retained beneficial interest in the tobacco prior to presenting the tobacco for such loan.

(1) For purposes of this section, the producer will be considered to have retained beneficial interest in the tobacco only if such producer has complete control of and title to such tobacco, including the right to tender such tobacco to CCC for a price support loan on the date such tobacco is tendered to CCC for a price support loan, and has maintained this right and that interest in the tobacco at all times prior to presenting the tobacco for the loan.

(2) If a producer receives a monetary advance or other consideration in connection with or for such tobacco, the producer will be deemed for purposes of this section to have lost beneficial interest in such tobacco unless the producer has a written agreement with the person who provides the advance payment or consideration and such agreement accurately and fully:

(i) Sets forth the amount, nature and date of the advance or consideration;

(ii) Sets forth the poundage on which the advance or consideration was made;

(iii) Provides that the tobacco will be sold at a producer auction through an auction warehouse at which price support is provided, or will be presented for a price support loan;

(iv) Provides that as a full and final settlement on the tobacco, the full sales price at the producer auction or the full loan proceeds will be paid to the producer minus only the following:

(A) Any advance set out in the agreement; and

(B) Standard published assessments or charges for services rendered at standard published rates that apply to all tobacco of all producers, including tobacco for which no advance has been paid;

(v) Sets forth the date of final settlement to be made on the tobacco which date can be no later than the date applicable to tobacco on which no advance has been made.

(vi) States that the full profit and beneficial interest in the tobacco, and full control of the tobacco, remains with the producer and provides that the full profit and beneficial interest will remain with the producer at all times prior to any disposition of the tobacco as producer tobacco, or at a producer auction, or presenting for a price support loan.

(3) A producer will be considered to have lost beneficial interest in tobacco and thereby not be an "eligible producer" for such tobacco as of the date any advance or other preauction arrangement was made if CCC determines for that tobacco that:

(i) The advance per pound equalled or exceeded the producer's final net proceeds per pound on all tobacco marketed from the farm for that marketing year at producer auctions, including any tobacco on which an advance is made or the pledging of tobacco for price support loans;

(ii) A written agreement was required by paragraph (e)(2) of this section, but none has been executed; or

(iii) A written agreement was executed but did not meet the requirements of paragraph (e)(2) of this section.

(4) If tobacco is pledged for a price support loan and the producer is not then or thereafter deemed to be or to have been an eligible producer for that tobacco for purposes of placing the tobacco under such loan, then the tobacco shall be considered to have a loan value of zero. The producer and the person that took possession of the tobacco from the producer, or paid an advance, or marketed the tobacco, or disposed of the tobacco as producer tobacco, shall be jointly and severally liable with the producer for returning any loan proceeds previously paid in the name of, or for the account of, the producer. Further, the disposition of any tobacco as producer tobacco where the producer is not then or thereafter considered to have been an eligible producer with respect to such tobacco may be the subject of penalties on the grounds of false identification, excess marketings, or otherwise as provided in part 723 of this title. These remedies

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are in addition to any others as may apply.

[51 FR 32426, Sept. 12, 1986, as amended at 53 FR 43675, Oct. 28, 1988; 56 FR 21259, May 8, 1991; 57 FR 43583, Sept. 21, 1992; 60 FR 21037, May 1, 1995; 67 FR 484, Jan. 4, 2002; 68 FR 65386, Nov. 20, 2003]

§ 1464.8 Eligible tobacco.

Eligible tobacco for the purpose of pledging such tobacco as collateral for a price support loan is any tobacco of a kind for which price support is available, as provided in §1464.2, that is in sound and merchantable condition, is not nested as defined in 7 CFR part 29, and:

(a) Is not a kind of tobacco for which marketing quotas are not in effect for the marketing year because marketing quotas have been disapproved in a referendum of producers;

(b) Is offered for marketing by the person who was the producer of the tobacco, or in the case of a deceased producer, by the duly authorized successor(s) in interest;

(c) Is offered for marketing in accordance with §1464.2(b);

(d) If marketing quotas are in effect for the kind of tobacco:

(1) The farm operator has filed a report of the acreage planted to tobacco on the farm in the applicable year in accordance with part 718 of this title.

(2) The tobacco was produced on a farm on which neither the reported nor determined acreage of the kind of tobacco exceeds any acreage allotment established for the farm in accordance with the applicable part 723 of this title for the kind of tobacco for the applicable year.

(3) Is identified when delivered to the association either directly or through an auction warehouse with a single marketing card for each lot of tobacco.

(e) If marketing quotas are in effect for the kind of tobacco or if marketing quotas are not in effect but would have been in effect for the kind of tobacco had such marketing quotas not been terminated by the Secretary, the operator of the farm on which the tobacco was produced:

(1) Has certified that all tobacco delivered from such farm for price support will not have not been nested as defined in part 29 of this title.

(2) Has certified to the FSA county committee on a form approved by the Deputy Administrator that all pesticides (including plant regulators, defoliants, and desiccants), as defined in 40 CFR 162.3, which were used in connection with the production of the tobacco have been approved by the Environmental Protection Agency for use on tobacco and any such pesticides that were used were applied in accordance with label directions.

(3) Has not refused to permit the sampling of such tobacco, either on the farm or where stored, for chemical analysis for the purpose of verifying the accuracy of any pesticide certification.

(f) With respect to burley and flue-cured tobacco only, is a quantity of tobacco which when added to the pounds of the respective kind of tobacco previously marketed from the farm during the marketing year does not exceed 103 percent of the effective farm marketing quota established for the respective kind of tobacco for that year.

(g) With respect to flue-cured tobacco only, is a quantity of tobacco which was delivered to the association through an auction warehouse and is a quantity which when added to the pounds of flue-cured tobacco previously marketed from the farm at that warehouse does not exceed the quantity of flue-cured tobacco designated by the farm operator for marketing at that warehouse.

(h) Any tobacco with respect to which the producer is not an eligible producer under the provisions of §1464.7 shall not be eligible for a price support loan and in any case in which the producer is deemed to have ceased to have retained the status of an eligible producer due to an advance or other preauction arrangement, the producer's marketing card shall not be used to market such tobacco except to reflect a nonauction marketing to the person who paid an advance to the producer or took possession of the tobacco from the producer.

[51 FR 32426, Sept. 12, 1986, as amended at 56 FR 21259, May 8, 1991; 57 FR 43584, Sept. 21, 1992; 61 FR 33304, June 27, 1996; 62 FR 3198, Jan. 22, 1997; 66 FR 53509, Oct. 23, 2001; 68 FR 65385, Nov. 20, 2003]

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§ 1464.9 Refund of price support advance.

In any case in which a producer has received price support on a lot of tobacco such producer shall refund to CCC any price support advance received with respect to such lot of tobacco if it is determined, after notice and opportunity for an administrative hearing in accordance with part 780 of this title, that such producer:

(a) Received a price support advance on tobacco that was nested, as defined in part 29 of this title or otherwise not eligible for price support. The county committee, with concurrence of a State Committee Representative, may reduce the refund with respect to tobacco otherwise required in this part, in accordance with guidelines issued by the Deputy Administrator.

(b) Filed a false report with respect to the use of pesticides on tobacco produced on the farm from which such lot of tobacco was identified, at the time of marketing, as having been produced.

(c) Misrepresented any fact affecting a tobacco program determination, adopted any scheme or device which tends to defeat the purpose of the tobacco program, or made any fraudulent representation which tends to defeat the purpose of the tobacco program. The refund of CCC price support advance shall apply to all payments on all farms received by such producer.

[51 FR 32427, Sept. 12, 1986, as amended at 56 FR 21259, May 8, 1991; 61 FR 33304, June 27, 1996]

§ 1464.10 No net cost tobacco fund or account.

(a) *Definitions.* As used in this part and in all instructions, forms, and documents in connection therewith, the following terms shall have the meanings herein assigned to them.

(1) *Account* means an account established within the CCC for an association, which account shall be known as the "No Net Cost Tobacco Account."

(2) *Area* when used in connection with an association, means the general geographical area in which farms of the producer-members of such association are located, as determined by the Secretary.

(3) *Association* means a producer-owned cooperative marketing associa-

tion which has entered into a loan agreement with CCC to make price support available to producers of tobacco.

(4) *CCC* means the Commodity Credit Corporation.

(5) *Fund* means the capital account to be established within each association, which account shall be known as the "No Net Cost Tobacco Fund".

(6) *Net gains* means the amount by which total proceeds obtained from the sale by an association of a crop of quota tobacco pledged to CCC for a price support loan exceeds the principal amount of the price support loan made by CCC to the association on such crop, plus interest and charges.

(7) *Quota tobacco* means any kind of tobacco for which marketing quotas are in effect or for which marketing quotas are not disapproved by producers.

(8) *To market* means to dispose of quota tobacco by voluntary or involuntary sale, barter, exchange, gift between living persons, or consigning the tobacco to an association for a price support advance.

(9) *Purchaser* means any person who purchases in the United States, either directly or indirectly for the account of such person or another person, burley or flue-cured tobacco from the producer, or, with respect to the 1986 and subsequent crops of such tobacco, from an association.

(b) *Establishing a No Net Cost Tobacco Fund.* Except as provided in paragraph (c) of this section, each association shall establish and maintain a Fund in accordance with the requirements of section 106A of the Agricultural Act of 1949, as amended.

(c) *Establishing a No Net Cost Tobacco Account.* Upon request of any association, an Account shall be established and maintained for such association in lieu of a Fund. Also, after consultation with an association, the Secretary may establish and maintain an Account for such association in lieu of a Fund if the Secretary determines that the accumulation of the Fund for such association is, and is likely to remain, inadequate to reimburse CCC for net losses which CCC may sustain under its loan agreement with such association. The requirements of section 106B of the Agricultural Act of 1949, as amended,

shall be applicable with respect to an Account.

(d) *Producer contributions or assessments.* As a condition of eligibility for price support during the applicable marketing year a producer of quota tobacco shall agree to make contributions to the Fund established for the association serving the area for the kind of tobacco to be marketed by such producer during such marketing year, or, if a Fund has not been established for such association, pay assessments to the Account established for such association. The amount of any contribution or assessment shall be determined in accordance with sections 106A and 106B of the Agricultural Act of 1949, as amended.

(e) *Filing of agreement.* Any agreement to make contributions to a Fund or pay assessments to an Account shall be on a form approved by the Deputy Administrator and shall be filed with the local FSA county committee prior to the issuance of a marketing card for use in identifying tobacco to be marketed from the farm of the kind of tobacco for which such agreement is applicable.

(f) *Responsibility of farm operator.* The farm operator shall determine whether all producers on the farm agree to make contributions to the Fund or pay assessments to the Account, as applicable, that has been established for the association serving the area and may sign on their behalf an agreement which acknowledges that such persons will make such contributions or pay such assessments.

(g) [Reserved]

(h) *Purchaser assessments.* Each purchaser of burley and flue-cured quota tobacco shall pay an assessment with respect to purchases of all such kind of tobacco marketed by a producer from a farm, including purchases from the association of such tobacco from the 1986 and subsequent crops. Such assessment shall be determined in accordance with section 106A or 106B, as applicable, of the Agricultural Act of 1949, as amended, and shall be paid into the applicable association's Fund or Account.

(i) *Collection and remission of contributions or assessments.* (1) Any producer contribution or assessment due under

this section shall be collected at the time of marketing:

(i) From any dealer, receiving station official or warehouse operator who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer; or

(iii) If the tobacco involved is delivered directly to an association, by such association.

(2) A dealer, receiving station official or warehouse operator may deduct the amount of any producer contribution or assessment from the price paid to the producer for such tobacco.

(3) Any purchaser assessment due under this section shall be collected at the time of marketing:

(i) From the dealer, receiving station official or warehouse operator who acquired the tobacco involved from the producer; or

(ii) If the tobacco involved is marketed by a producer directly to any person outside the United States, from the producer who may add an amount equal to the purchaser assessment to the price paid by the purchaser for such tobacco.

(4) If tobacco involved is marketed at a warehouse auction, the warehouse operator may add an amount equal to the purchaser assessment to the price paid by the purchaser of such tobacco.

(5) All persons who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association within 15 days of the date on which the tobacco was marketed except as provided in paragraphs (i)(5) (i) and (ii).

(i) Warehouse operators who are responsible for collecting any contribution or assessment required by this section shall remit such collections to the applicable association in accordance with the provisions of the loan contract between the association and the warehouse operator.

(ii) Dealers who are responsible for collecting any contribution or assessment as required by this section shall remit such collections to the State FSA office in accordance with part 723 of this title.

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(6) Any person who fails to collect and timely remit any collections required by this section shall be subject to a late payment charge. Such late payment shall be calculated and assessed in accordance with part 1403 of this title.

(j) *Penalty for failure to collect and remit contributions or assessments.* (1) If any person fails to collect and remit any contributions or assessments according to the provisions of this section such person shall be liable, in addition to any amount of contributions or assessments and any late payment charges, to a marketing penalty at a rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the kind of tobacco for the immediately preceding year on the quantity of tobacco as to which failure occurs. Such a penalty only shall be assessed after the person has been notified of the pending assessment of the penalty and the person has been afforded an opportunity for a hearing with respect to the assessment of the penalty. However, such marketing penalty shall not be assessed if such contributions or assessment are collected and remitted not later than 15 days after the date required by this part.

(2) If a warehouse operator fails to collect and remit any contribution or assessment to an association within 15 days after the date provided in the loan contract between the warehouse operator and such association, the association shall provide to the FSA State committee for the state in which the warehouse operator's business is located a statement of the reason for the failure of the person to timely remit such collection, including the name and address of the warehouse involved, the pounds of tobacco purchased, the date of purchase, and the date the collection was required to be remitted. The association shall submit such facts within 25 days after the applicable due date regardless of whether such assessment or contribution has been remitted to the association.

(3) The FSA State committee shall be responsible for assessing any marketing penalty determined in accordance with paragraph (j)(1) of this section.

(4) The Deputy Administrator or the Deputy Administrator's designee may reduce the amount of any marketing penalty for which a person otherwise would be liable in accordance with the provisions of this section.

(5) The marketing penalty provided in this section is in addition to, and not exclusive of, any other remedies that may be available with respect to collection and remission of any contributions or assessments made in accordance with this section.

[47 FR 51556, Nov. 16, 1982, and 48 FR 21110, May 11, 1983, as amended at 49 FR 24374, June 13, 1984; 51 FR 32427, Sept. 12, 1986; 53 FR 43675, Oct. 28, 1988; 56 FR 21259, May 8, 1991; 57 FR 43584, Sept. 21, 1992; 67 FR 484, Jan. 4, 2002; 68 FR 65385, Nov. 20, 2003]

§ 1464.11 Nonrefundable marketing assessment.

Effective only for each of the 1991 through 1998 crops of tobacco for which price support is made available according to §1464.2 of this part, both the producer and purchaser of such tobacco shall each remit to the CCC a nonrefundable marketing assessment in an amount equal to .5 percent of the national price support level for each such kind and crop on each pound of tobacco marketed. The nonrefundable marketing assessment will be:

(a) Determined and announced by CCC at the time of announcing the national price support level for applicable kinds of tobacco or as soon thereafter as possible.

(b) Collected and remitted to CCC in accordance with §1464.10(i) of this part from producers and purchasers at the time of marketing.

(c) Collected by loan associations and remitted to CCC on all such tobacco pledged as loan collateral at the time such 1991 through 1998 crops of tobacco are sold from loan inventories.

(d) Subject to the same penalty for failure to be collected and remitted as provided for in §1464.10(j) of this part.

(e) Enforceable in the courts of the United States by the Secretary.

[56 FR 21259, May 8, 1991, as amended at 60 FR 19667, Apr. 20, 1995; 62 FR 3198, Jan. 22, 1997]

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§ 1464.12 Flue-cured (types 11–14) tobacco.

- (a) The 1993-crop national price support level is 157.7 cents per pound.
- (b) The 1994-crop national price support level is 158.3 cents per pound.
- (c) The 1995-crop national price support level is 159.7 cents per pound.
- (d) The 1996-crop national price support level is 160.1 cents per pound.
- (e) The 1997-crop national price support level is 162.1 cents per pound.
- (f) The 1998-crop national price support level is 162.8 cents per pound.
- (g) The 1999-crop national price support level is 163.2 cents per pound.
- (h) The 2000-crop national price support level is 164.0 cents per pound.
- (i) The 2001-crop national price support level is 166.0 cents per pound.
- (j) The 2002-crop national price support level is 165.4 cents per pound.

[58 FR 11962, Mar. 2, 1993, as amended at 59 FR 6867, Feb. 14, 1994; 60 FR 22460, May 8, 1995; 61 FR 37673, July 19, 1996; 62 FR 24800, May 7, 1997; 63 FR 55938, Oct. 20, 1998; 64 FR 66718, Nov. 30, 1999; 68 FR 34779, June 11, 2003]

§ 1464.13 Fire-cured (type 21) tobacco.

- (a) The 1993-crop national price support level is 139.5 cents per pound.
- (b) The 1994-crop national price support level is 140.7 cents per pound.
- (c) The 1995-crop national price support level is 143.0 cents per pound.
- (d) The 1996-crop national price support level is 145.5 cents per pound.
- (e) The 1997-crop national price support level is 149.8 cents per pound.
- (f) The 1998-crop national price support level is 153.6 cents per pound.
- (g) The 1999-crop national price support level is 155.9 cents per pound.
- (h) The 2000-crop national price support level is 155.9 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15295, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.14 Fire-cured (types 22–23) tobacco.

- (a) The 1993-crop national price support level is 146.4 cents per pound.
- (b) The 1994-crop national price support level is 148.3 cents per pound.
- (c) The 1995-crop national price support level is 151.8 cents per pound.

- (d) The 1996-crop national price support level is 155.7 cents per pound.

- (e) The 1997-crop national price support level is 162.3 cents per pound.

- (f) The 1998-crop national price support level is 168.1 cents per pound.

- (g) The 1999-crop national price support level is 171.6 cents per pound.

- (h) The 2000-crop national price support level is 171.6 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15296, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.15 Dark air-cured (types 35–36) tobacco.

- (a) The 1993-crop national price support level is 125.5 cents per pound.

- (b) The 1994-crop national price support level is 127.3 cents per pound.

- (c) The 1995-crop national price support level is 130.4 cents per pound.

- (d) The 1996-crop national price support level is 133.9 cents per pound.

- (e) The 1997-crop national price support level is 139.8 cents per pound.

- (f) The 1998-crop national price support level is 145.0 cents per pound.

- (g) The 1999-crop national price support level is 148.1 cents per pound.

- (h) The 2000-crop national price support level is 148.1 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27220, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15296, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.16 Virginia sun-cured (type 37) tobacco.

- (a) The 1993-crop national price support level is 123.3 cents per pound.

- (b) The 1994-crop national price support is 124.5 cents per pound.

- (c) The 1995-crop national price support is 126.5 cents per pound.

- (d) The 1996-crop national price support is 128.8 cents per pound.

- (e) The 1997-crop national price support level is 132.6 cents per pound.

- (f) The 1998-crop national price support level is 136.0 cents per pound.

- (g) The 1999-crop national price support level is 138.0 cents per pound.

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(h) The 2000-crop national price support level is 138.0 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27221, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15296, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.17 Cigar-filler and binder (types 42–44 and 53–55) tobacco.

(a) The 1993-crop national price support level is 107.4 cents per pound.

(b) The 1994-crop national price support level is 108.4 cents per pound.

(c) The 1995-crop national price support level is 110.1 cents per pound.

(d) The 1996-crop national price support level is 112.0 cents per pound.

(e) The 1997-crop national price support level is 116.9 cents per pound.

(f) The 1998-crop national price support level is 121.2 cents per pound.

(g) The 1999-crop national price support level is 123.8 cents per pound.

(h) The 2000-crop national price support level is 123.8 cents per pound.

[58 FR 36863, July 9, 1993, as amended at 59 FR 27221, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996; 62 FR 43922, Aug. 18, 1997; 64 FR 15296, Mar. 31, 1999; 65 FR 41556, July 6, 2000; 65 FR 64594, Oct. 30, 2000]

§ 1464.18 Cigar-filler (type 46) tobacco.

(a) The 1993-crop national price support level is 83.4 cents per pound.

(b) The 1994-crop national price support level is 84.4 cents per pound.

(c) The 1995-crop national price support level is 86.1 cents per pound.

(d) Price support shall not be made available for the 1996 and subsequent crops of this type (46).

[58 FR 36863, July 9, 1993, as amended at 59 FR 27221, May 26, 1994; 60 FR 38234, July 26, 1995; 61 FR 63702, Dec. 2, 1996]

§ 1464.19 Burley (type 31) tobacco.

(a) The 1993-crop national price support level is 168.3 cents per pound.

(b) The 1994-crop national price support level is 171.4 cents per pound.

(c) The 1995-crop national price support level is 172.5 cents per pound.

(d) The 1996-crop national price support level is 173.7 cents per pound.

(e) The 1997-crop national price support level is 176.0 cents per pound.

(f) The 1998-crop national price support level is 177.8 cents per pound.

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(g) [Reserved]

(h) The 2000 crop national price support level is 180.5 cents per pound.

[58 FR 36859, July 9, 1993, as amended at 59 FR 22725, May 3, 1994; 60 FR 27868, May 26, 1995; 61 FR 50425, Sept. 26, 1996; 62 FR 30230, June 3, 1997; 63 FR 55940, Oct. 20, 1998; 65 FR 78407, 65 FR Dec. 15, 2000]

§§ 1464.20–1464.23 [Reserved]

§ 1464.24 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB control numbers 0560–0058 and 0560–0182.

[68 FR 65386, Nov. 20, 2003]

Subpart B—Importer Assessments

SOURCE: 59 FR 10944, Mar. 9, 1994, unless otherwise noted.

§ 1464.101 Definitions.

(a) *Applicability.* The definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

(b) *Terms.* For purposes of this subpart, the following terms shall have the following meanings unless otherwise indicated.

Customs Service. The United States Customs Service of the United States Department of the Treasury.

De minimis special entries. Imports of unmanufactured tobacco when the total importation at any time or on any date is 100 kilograms or less and such tobacco is imported segregated from other tobacco for use as samples, for research, or other use approved by the Director.

Director. The Director, or Acting Director, Tobacco Division, Farm Service Agency, U.S. Department of Agriculture.

Entered. Tobacco shall be considered to have entered the United States when the tobacco has been released by the Customs Service for entry (direct entry or bonded warehouse withdrawal) for consumption into the commerce of the United States, unless the tobacco is

brought into the country outside the control of the Customs Service, in which case the tobacco will be considered to have entered the United States when such tobacco physically enters the territory of the United States.

Entry date. The date on which the tobacco was released by Customs Service for consumption into the commerce of the United States, unless the tobacco enters commerce in the United States without such a release, in which case the entry date shall be the date such tobacco physically entered the territory of the United States.

Imported tobacco. Effective January 1, 1994, any unmanufactured tobacco, including Oriental and Turkish tobacco, that was not produced in the United States but has entered the United States.

Importer. A person who owns or controls such tobacco at the time at which the tobacco entered the United States.

Person. An individual, partnership, association, corporation, cooperative, estate, trust, joint venture, joint operation, or other business enterprise or other legal entity, and, when applicable, a State, a political subdivision of a State, or any agency thereof.

United States. The 50 States of the United States, the District of Columbia, Puerto Rico, or any Territory or Possession of the United States.

Unmanufactured tobacco. Any tobacco that is not processed and packaged as a consumer tobacco product, including, but not limited to, any tobacco classifiable under the Harmonized Tariff Schedule of the United States (HTS) in existence as of January 1, 1994, under Chapter 2401 of the HTS or under classifications 2403912000, 2403914050, 2403914070, 2403990050, 2403990065, and 2403990070 of Chapter 2403 of the HTS.

[59 FR 10944, Mar. 9, 1994, as amended at 64 FR 2803, Jan. 19, 1999; 68 FR 65385, Nov. 20, 2003]

§ 1464.102 Budget deficit marketing assessment.

(a) *General.* Subject to the limits set out below, a budget deficit marketing assessment (BDMA) shall be remitted by all importers of tobacco for tobacco entered into the commerce of the United States.

(b) *Period of coverage.* Except as provided for in (h), this section shall only apply to tobacco imported after September 13, 1995, and through the 1998 calendar year.

(c) *Tobacco covered.* Except as provided in (g) and (h), this section shall only apply to unmanufactured tobacco entered for consumption into the commerce of the United States that is, as determined by the Director, the same kind or a like kind of tobacco for which a domestic price support program is in effect; provided further that, except as provided in (g) and (h), this section shall not apply to cigar kinds of tobacco.

(d) *Rate.* Except as provided in (h) and subject to provisions in this section dealing with mixed lots, the BDMA rate shall be the rate for the corresponding domestic tobacco for the marketing year for the domestic tobacco which is in progress when the imported tobacco becomes subject to the assessment. The BDMA rate shall be applied on a per kilogram basis to all quantities of such tobacco imported for consumption, except for *de minimis* special entries approved by the Director.

(e) *Mixed entries.* For entries of mixed kinds of tobacco, the importer shall certify the composition of the mixed lot and remit the amount of assessment due for the respective quantity of each applicable kind of tobacco in the mixture. If the importer is unable or unwilling to determine and certify the composition of the mixed lot, the entire lot shall be subject to the BDMA rate for the kind of tobacco with the highest rate.

(f) *Remittance of BDMA.* The BDMA amount due shall be remitted in accordance with § 1464.104 of this part. Failure to remit or timely remit BDMA shall subject the importer to a marketing penalty on the quantity for which such failure occurred. The penalty will be assessed in accordance with § 1464.106 of this part.

(g) *Records and disputes.* It shall be the responsibility of all importers of tobacco to establish that their tobacco is not subject to any BDMA or is not subject to a higher BDMA than that claimed to be due by such importer. All

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importers of tobacco must, accordingly, maintain sufficient records to demonstrate that they are not liable for a higher BDMA amount. Disputes involving the application of the BDMA shall be resolved by the Director.

(h) *Tobacco entered prior to September 13, 1995.* Notwithstanding other provisions of this section, all imported tobacco which was entered for consumption into the United States from January 1, 1994, through September 13, 1995, shall be subject to a BDMA to the extent provided for under those rules which were in effect under this part during that period. BDMA's payable for that period shall be paid by the importer and shall be at the rate specified in those rules and subject to the terms of those rules.

[62 FR 3198, Jan. 22, 1997]

§ 1464.103 Importer no-net-cost assessments.

(a) *General.* The importer of any unmanufactured imported burley or flue-cured tobacco shall pay a no-net-cost assessment on each kilogram of such tobacco that is imported after December 31, 1993, regardless of the form in which it is imported and regardless of whether it is mixed or blended with other tobacco, except for *de minimis* special entries.

(b) *Amount of assessment.* The amount of the no-net-cost assessment which shall apply under this section shall be the amount determined by multiplying:

(1) For imported burley tobacco, the number of kilograms of such tobacco by the sum, converted to per kilogram basis, of the no-net-cost producer and purchaser contributions or assessments as implemented pursuant to subpart A for domestic burley tobacco that is marketed during the domestic marketing year during which the tobacco was imported.

(2) For imported flue-cured tobacco, the number of kilograms of such tobacco by the sum, converted to a per kilogram basis, of the no-net-cost producer and purchaser contribution or assessments as implemented pursuant to subpart A for domestic flue-cured tobacco that is marketed during the domestic marketing year during which the tobacco was imported.

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§ 1464.104 Remittance of importer assessments.

(a) *Where to remit.* A person making a remittance shall follow instructions on the reverse side of form CCC-100.

(b) *When to remit.* Importer assessments shall be remitted within 10 business days after the date on which the imported tobacco is entered. For remittances that are mailed, the date of the remittance will be considered the date on which the official U.S. Postal Service postmark was affixed.

(c) *Instructions.* Remittances must be made in accordance with instructions on form CCC-100.

(d) *Documentation.* Unless the Director shall direct otherwise, in writing, each remittance of an importer assessment shall be accompanied by form CCC-100, Importer Entry and Assessment Worksheet, and as applicable, Customs Service Form CF7501 or CF7505, or other Customs Service documentation that, based on the documentation and codes normally required or used by the Customs Service, includes the following with respect to each entry of imported tobacco:

- (1) Entry filer code/entry number,
- (2) Importer of record number,
- (3) Importer of record name and address,
- (4) Ultimate consignee number,
- (5) Entry date,
- (6) District/port of entry,
- (7) Harmonized Tariff Schedule Number,
- (8) Quantity entered (net weight in kilograms),
- (9) Entry type (formal or informal), and
- (10) Amount remitted.

(e) *Late payment charge.* Any importer who fails to timely remit any assessment required by this subpart shall be subject to a late payment charge. Such late payment charge shall be calculated and assessed in accordance with part 1403 of this chapter, or successor regulations, and shall be in addition to any penalty due or other charge due.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3198, Jan. 22, 1997]

§ 1464.105 Refund of assessments.

Assessments paid on imported tobacco may be refunded if the person

importing such tobacco establishes, to the satisfaction of the Director, that the tobacco on which the assessment was paid has been reexported as unmanufactured tobacco or destroyed in an unmanufactured state. Assessment refunds will be based on entry weight as identified on Customs Service Form CF7501 or CF7505, or other documentation or data as required by the Director or found by the Director to be appropriate. Additional refund documentation, including proof of export, will be required consistent with the "duty drawback" provisions administered by the Customs Service pursuant to section 313(a) of the Tariff Act of 1930, as amended. Persons seeking a refund shall submit their request and documentation to the Director, Tobacco Division, Farm Service Agency (FSA), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013-2415. Where deemed appropriate, the Director may, in writing, allow the use of substitute documentation and permit payments to successors in interest where the re-exporter and importer are not the same. Where exporter and importer are not the same, refunds shall be to the importer unless the importer, in writing, notifies the Director that the payment should be made to the exporter.

[59 FR 10944, Mar. 9, 1994, as amended at 68 FR 65385, Nov. 20, 2003]

§ 1464.106 Marketing penalties.

(a) *Failure to remit assessments.* An importer who fails to timely remit an assessment in accordance with this subpart shall be subject to a marketing penalty.

(1) *Budget deficit marketing assessment.* With respect to the assessment referred to in § 1464.102, if an importer fails to pay or to timely remit the BDMA, such importer shall be subject to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective like kind domestic tobacco being imported for the domestic marketing year which immediately preceded the domestic marketing year in which the imported tobacco became subject to the BDMA. Such marketing penalty rate shall apply to the quantity of tobacco on

which the failure occurred. Amounts due for the penalty shall be in addition to any other amount as may be due, including, but not limited to, the amount due for the BDMA itself, or any applicable late fees, charges, or interest.

(2) *Importer no-net-cost assessment.* With respect to assessments referred to in § 1464.103, if an importer of burley or flue-cured tobacco fails to timely remit a no-net-cost assessment in accordance with the provisions in this subpart, such importer shall be liable, in addition to any no-net-cost assessment or other sum due and any late payment charges, to a marketing penalty at a per kilogram rate equal to 75 percent of the average market price (calculated to the nearest whole cent) for the respective kind of domestic tobacco (burley or flue-cured) for the respective domestic tobacco marketing year in which such imported tobacco was imported, on the quantity of tobacco as to which the failure occurs.

(b) *Exception to marketing penalty.* A marketing penalty otherwise required by this paragraph may be forgiven if the assessment for which nonpayment of the penalty could be assessed is remitted not later than 15 calendar days after the date otherwise required for the remittance by this subpart.

(c) *Notification of marketing penalty.* Before a marketing penalty is assessed, the importer shall be notified of the pending assessment and shall be afforded an opportunity for a hearing with respect to the assessment of the penalty. Such notification will be by, and such hearing will be before, the Director or designee.

(d) *Marketing penalty reduction.* The Executive Vice President, CCC, or designee, may reduce the amount of any marketing penalty for which a person otherwise would be liable under the provisions of this section upon finding that failure to comply was unintentional or without knowledge on the part of such person and that such reduction would not damage the tobacco program or the administration of this part.

(e) *Prohibition of use, processing or marketing of tobacco for which the assessments have not been paid; other remedies.* The knowing use, processing, or marketing of tobacco in the commerce of

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the United States of any tobacco for which an assessment or related charge required or provided for by this subpart is past due, is prohibited. The penalties and other remedies provided in this section shall be in addition to, and not exclusive of, other remedies that may be available.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3198, Jan. 22, 1997]

§ 1464.107 Recordkeeping.

(a) *Retention of records.* Each importer of tobacco shall maintain all records that are relevant to any imported tobacco that is subject to an assessment in accordance with this subpart. Such records shall be retained for a period of three years following the date of entry of such tobacco. The burden of establishing compliance with this part shall be on the importer of the tobacco.

(b) *Examination of records and reports.* The Executive Vice President, CCC, the Director, or any person authorized by one of such persons, or any auditor or agent of the Office of the Inspector General, is authorized to examine any records that such person has reason to believe are relevant to any matter pertinent to the payment of importer assessments under this subpart. Upon request of an authorized person, each importer shall make available for examination such records as are under such importer's control that may be relevant to imported tobacco that is subject to an assessment in accordance with this subpart or otherwise relevant to the administration of this subpart. Upon a failure to provide access or records, the Director may presume that such an inquiry would have produced information unfavorable to the party to the inquiry and shall make further determinations in the matter accordingly.

§ 1464.108 Reconsideration and appeal.

An importer may request the Director to reconsider any determination of the amount of any assessment due, any marketing penalty assessed, or other adverse determination rendered in accordance with this subpart. Any request for reconsideration shall be made within 30 calendar days of the date of the notification of such assessment, marketing penalty, or adverse deter-

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mination. If the importer is dissatisfied with a determination rendered by the Director with respect to a request for reconsideration, such importer may appeal the determination to the Director, National Appeals Division, USDA. Any such appeal shall be handled in accordance with the provisions of 7 CFR part 780.

[59 FR 10944, Mar. 9, 1994, as amended at 62 FR 3199, Jan. 22, 1997; 68 FR 65385, Nov. 20, 2003]

Subparts C-F [Reserved]

Subpart G—Tobacco Payment Program

SOURCE: 68 FR 18834, Apr. 17, 2003, unless otherwise noted.

§ 1464.601 Applicability and basic terms for payments.

This subpart sets forth the terms and conditions of the Tobacco Payment Program (TOPP). Under this program CCC will make direct payments on a farm relating to basic tobacco quotas or allotments established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*) for eligible tobaccos. Payments are subject to the availability of funds and payment formulas set out in this part.

§ 1464.602 Administration.

This subpart shall be administered by the Executive Vice President, CCC or his designee, under the general supervision of the Farm Service Agency (FSA), Deputy Administrator for Farm Programs (Deputy Administrator). The program shall be carried out in the field by State and county FSA committees and FSA employees in accordance with this subpart.

§ 1464.603 Eligibility.

For a person to be considered an eligible person for purposes of this part, such person must own or control (in some cases only) a farm for which on the status date a basic 2002 crop quota or allotment for eligible tobacco was established under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 (7 U.S.C. 1311 *et seq.*). Also, growers of that tobacco are eligible for

payments to the extent provided for in this part.

§ 1464.604 Definitions.

The definitions set forth in this section shall apply to the administration of TOPP under this subpart. The definitions in §§ 718.2 and 723.104 of this title also apply to TOPP. The definitions in this section apply rather than the definitions in §§ 718.2 and 723.104 of this title to the extent that the definitions in those sections differ. The following terms shall have the following meanings:

Controller means that person or entity who, as determined by the Deputy Administrator, controls the land used to produce eligible tobacco and share in the risk of production.

Eligible person means an owner, or (as applicable) controller of a farm for which a basic quota or allotment was established for the 2002 crop year under part I of subtitle B of title III of the Agricultural Adjustment Act of 1938 to the extent otherwise provided in these rules. Growers of that tobacco, as specified in this part, can also be eligible for payment. For this TOPP, an eligible person's status, as owner or controller or grower, will be determined as of July 1, 2002.

Eligible tobacco means each of the following kinds of tobacco: Flue-cured tobacco (types 11, 12, 13 and 14), burley tobacco (type 31), Virginia sun-cured tobacco (type 37), fire-cured tobacco (types 21-23), dark air-cured tobacco (types 35-36), and cigar filler/binder tobacco (types 42 through 44, 54 and 55).

Grower means for flue-cured tobacco and cigar binder tobacco, a "producer," as defined below, for all other eligible tobaccos, as "grower/tenant," as defined below.

Grower/tenant means a person or entity who provides labor to produce tobacco and share in the risk of production.

Owner means with respect to a quota or allotment farm the person or entity who owns the land for which the tobacco quota or allotment was established for the 2002 crop as of the operative status date of July 1, 2002 provided for in this part.

Payment pounds means the pounds of tobacco for which a person is eligible to be paid under this subpart.

Producer means a person or entity actively engaged in planting, growing, harvesting, and/or marketing of tobacco, or who shares in the risk of producing the crop.

Share in the risk of production means having a direct financial stake in the success of the crop through a direct share in the actual proceeds from the actual marketing of the crop which share is conditional upon the success of that marketing. Farm owners who cash-lease their farmland to a tobacco producer for the right to grow tobacco on that land and receive payment for such right regardless of whether or not a tobacco crop is marketed are not considered to share in the risk of production. Farm laborers who provide service in exchange for a wage and whose payment is not subject to the marketing of the tobacco crop are not considered to share in the risk of production.

TOPP means the Tobacco Payment Program.

§ 1464.605 Sign up.

(a) To apply for TOPP funds, persons must submit an application to the county FSA office by the date established by the Deputy Administrator. Late applications may be accepted if approved by the Deputy Administrator, if the lateness was the result of documented hardship.

(b) Data furnished by the applicant will be used to determine eligibility for program benefits. Furnishing the data is voluntary; however, without it program benefits will not be provided.

§ 1464.606 [Reserved]

§ 1464.607 Payment benefits.

(a) Payment will only be made subject to the availability of funds and only for eligible tobacco and for eligible persons who meet all conditions of eligibility for whom monies are provided by the terms of this section.

(b) The total national payment amount made available for each kind of eligible tobacco for all claimants for that kind of tobacco, will be computed by multiplying the 2002 crop national

poundage amount for that kind by 5.55 cents per pound.

(c) The national poundage amount of a kind shall be, for those tobaccos for which poundage quotas were established for individual farms, the national basic quota, in total, for all farms. For all other tobaccos, the 2002 crop national poundage amount shall be determined by multiplying the national basic acreage allotment for that kind of tobacco by the following per acre conversion factors:

- (1) For fire-cured tobacco (type 21) 1,746 pounds;
- (2) For fire-cured tobacco (types 22-23) 2,676 pounds;
- (3) For dark air-cured tobacco (types 35-36) 2,475 pounds; and
- (4) For Virginia sun-cured tobacco (type 37) 1,502 pounds.

(d) Once the national payment amount is determined for the eligible tobacco kind, it will for flue-cured tobacco (types 11-14) and for cigar filler tobacco (types 42-44 and 54-55) be divided into two equal parts, one for eligible owners and the other for eligible growers. Shares in the sub-accounts will be determined using basic poundage quota amounts for flue-cured tobacco and basic allotments for the cigar filler types. For cigar filler type allotments, a conversion to pounds will be made using the same conversion factor provided in paragraph (b) of this section.

(e) For those eligible tobaccos not covered in paragraph (d) of this section, the national payment amount fund as determined under paragraph (b) of this section will be divided into three equal parts. Those parts shall be: one for eligible owners; one for eligible controllers; and one for eligible growers. Shares in each sub-account will be determined for burley tobacco using:

- (1) Basic poundage quota amounts for owners; and
- (2) Effective quota amounts for controllers and growers.

(f) For all other tobaccos covered by paragraph (e) of this section, shares in each sub-account will be determined using:

- (1) Basic allotments for owners; and
- (2) Effective allotment amounts for controllers and growers. Allotments will be converted to pounds using the

conversion factors in paragraph (c) of this section. "Effective quotas" and "effective allotments" means the amount of quota or allotment before any transfer which, as determined by the Deputy Administrator, occurred after a disaster.

(g) Growers who otherwise meet the terms of this part, will qualify based on the full amount of the basic quota or effective quota or allotment, as the case may be, for the kind involved, even though they did not fully produce the operative pounds. Such growers must meet the labor, active engagement in farming, and risk of production elements of the "grower" definition of §1464.604, as applicable to their kind of tobacco. The Deputy Administrator may provide other elements of eligibility as necessary to accomplish the provisions of this part in accord with the operative legislation.

(h) Payments will be made as soon as practicable.

(i) The amount of TOPP funds allocated to the eligible persons in Georgia will be disbursed only if the State of Georgia agrees to use an equal amount of funds (not to exceed \$13,000,000) to make payments in the same manner as provided for in this section.

(j) All payments under this part are subject to the eligibility of funds. In the case where a payment to a farm is disputed the Deputy Administrator may require that all interested parties agree to the resolution of the dispute before any payment is made and may delay payments to the farm until any such disputes are resolved. Also, as determined appropriate to accomplish the goal that program payments be made expeditiously in a manner that is administratively efficient, the Deputy Administrator may properly exclude payments to a person who does not file a timely claim and all payments may be made to those parties whose claim to the payment is not challenged. Nothing in this section shall, however, be construed to prevent the agency from denying any payment to any person based upon a failure of that person to meet any eligibility criteria set forth in this part.

Commodity Credit Corporation, USDA

§ 1464.613

§ 1464.608 Offsets and assignments.

(a) TOPP payments, or a portion thereof, shall be made without regard to questions of title under State law and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor. However, offsets and withholdings of TOPP payments may be taken in accordance with part 1403 of this chapter.

(b) TOPP payments may be assigned as provided in part 1404 of this chapter.

§ 1464.609 Misrepresentation and scheme or device.

(a) A person who is determined to have misrepresented any fact with the intention of affecting a TOPP program determination or received payments as a result of such misrepresentation shall not be entitled to payments and must refund all payments, plus interest in accordance with 7 CFR part 1403.

(b) A person determined to have knowingly adopted a scheme or device that tends to defeat the purpose of the program, or made any fraudulent representation shall refund all payments, plus interest determined in accordance with 7 CFR part 1403 and shall not receive any payment not yet made.

(c) Persons who are party to the TOPP application must refund any excess or unearned TOPP payments to CCC, plus interest, made under such application.

§ 1464.610 Cumulative liability.

The liability of any person for any penalty under this part or for any refund to CCC or related charge arising in connection therewith shall be in ad-

dition to any other liability of such person under any civil or criminal fraud statute or any other provision of law including, but not limited to, 18 U.S.C. 286, 287, 371, 641, 1001; 15 U.S.C. 714m; and 31 U.S.C. 3729.

§ 1464.611 Estates, trusts, and minors.

(a) Program documents executed by persons legally authorized to represent estates or trusts will be accepted only if such persons furnish evidence of the authority to execute such documents.

(b) A minor who is a producer shall be eligible for assistance under this subpart only if such person meets one of the following requirements:

(1) The right of majority has been conferred on the minor by court proceedings or by statute;

(2) A guardian has been appointed to manage the minor's property and has executed the applicable program documents; or

(3) A bond is furnished under which the surety guarantees any loss incurred for which the minor would be liable had the minor been an adult.

§ 1464.612 Death, incompetence, or disappearance.

In the case of death, incompetence, or disappearance of any person who is eligible to receive assistance in accordance with this part, such person or persons as specified in part 707 of this title may receive such assistance.

§ 1464.613 Appeals.

Determinations made under this part may be appealed as provided in parts 11 and 780 of this title.

APPENDIX A TO PART 1464—IMPORTER ENTRY AND ASSESSMENT WORKSHEET

REPRODUCE LOCALLY. Include form number and date on all reproductions. (See reverse for Privacy Act and Public Burden statements.)				Form Approved - OMB No. 0560-XXXX	
CCC-100 (Proposal 2)		U.S. DEPARTMENT OF AGRICULTURE Commodity Credit Corporation		2. ASSESSMENT RATES (per kg):	
IMPORTER ENTRY AND ASSESSMENT WORKSHEET (Unmanufactured Tobacco Entered for Consumption)		1. IMPORTER OF RECORD NAME AND ADDRESS		Marketing INNC (Flue-Cured) INNC (Burley)	
3. ENTRY FILER CODE/ ENTRY NO.	4. ENTRY DATE	5. IMPORTER OF RECORD NO.	6. ULTIMATE CONSIGNEE NO.	7. DISTRICT/PORT CODE	
PART A: DESCRIPTION AND CALCULATION OF ASSESSMENTS					
8. TYPE(S) OF TOBACCO	9. HTS NUMBER(S)	10. DESCRIPTION OF MERCHANDISE	11. NET QUANTITY (per kg)	12. MARKETING ASSESSMENT AMOUNT	13. INNC ASSESSMENT AMOUNT
FLUE-CURED		DRAFT		\$	\$
				\$	\$
				\$	\$
				\$	\$
14. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNTS REMITTED				\$	\$
BURLEY		DRAFT		\$	\$
				\$	\$
				\$	\$
				\$	\$
15. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNTS REMITTED				\$	\$
OTHER		DRAFT		\$	\$
				\$	\$
				\$	\$
				\$	\$
16. TOTAL NET QUANTITY AND TOTAL ASSESSMENT AMOUNT REMITTED				\$	\$
PART B: CERTIFICATION OF DECLARANT					
I certify, under penalty of law, that the information in this document is true, correct and complete to the best of my knowledge. The provisions of criminal and civil fraud statutes, including 18 USC 286, 287, 371, 1001; 15 USC 714m; and 31 USC 3729, may be applicable to the information provided.					
17A. SIGNATURE		17B. TITLE		17C. DATE	
18. RETURN TO: United States Department of Agriculture Agricultural Stabilization and Conservation Service KCMO/AOD/CMB P. O. Box 419205 Kansas City, MO 64141-6205					

This program or activity will be conducted on a nondiscriminatory basis without regard to race, color, religion, national origin, age, sex, marital status, or disability.

EDITORIAL NOTE: At 68 FR 65386, Appendix A to Part 1464 was amended by removing the phrase "Agricultural Stabilization and Conservation Service" and adding in its place "Farm Service Agency". However, this amendment could not be incorporated because the appendix is an illustration.